

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JUNE 10, 2009**

**CALL TO  
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, Randy Toavs, George Culpepper Jr., Mike Mower, Jeff Larsen and Jim Heim. Frank DeKort and Marc Pitman had excused absences. BJ Grieve and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were 7 people in the audience.

**APPROVAL OF  
MINUTES**

Culpepper moved and Hickey-AuClaire seconded to approve the 4/29/09 and 5/13/09 meeting minutes. Larsen abstained.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

None.

**MILL CREEK  
AMD PUB  
(FPPUD 09-01)**

A request in the Bigfork Zoning District by Calaway Brothers, Calaway Construction and Glacier Bank for an amendment to the original Mill Creek Estates Planned Unit Development. The applicants were proposing to modify the landscape plan to match the constructed improvements, revise the phasing plan to two phases, revise the phasing plan for the club house and modify the open space to 51% of the lot area. Public facilities, water and sewer, have been extended to the development. The property is located north of Holt Drive in Bigfork.

**STAFF REPORT**

BJ Grieve reviewed Staff Report FPPUD 09-01 for the Board.

**BOARD  
QUESTIONS**

Larsen asked what would happen if this amended PUD was denied.

Grieve said if they did not meet the original PUD stipulations, they would have several zoning violations.

Larsen asked how this situation happened.

Grieve said the understanding of the PUD process has not always been clear. When the situation came to staff's attention, steps were taken to start to rectify the problem.

Larsen asked for clarification on how much open space was being asked for.

Grieve clarified.

Culpepper asked who ultimately was responsible for this situation.

Grieve said it was brought to staff's attention by a neighbor to the project.

Culpepper asked how the Bigfork Neighborhood Plan affected the project.

Grieve said it would not affect it.

Culpepper expressed his concern over a condition concerning dust.

Grieve said it was Culpepper's prerogative to change the wording if he wished.

Cross and staff briefly discussed the appropriate procedure for dealing with an amended PUD.

## **APPLICANT PRESENTATION**

Mike Fraser, represented the applicant. He gave a history of the project and stated there were several similarities between the original PUD and the amended PUD. He explained the differences between the two PUDs. They were asking for the CCRs to be amended so that when 70% of the lots were sold, those home owners could vote on what size and how many amenities the clubhouse would have. The amendment included landscaping, and the clubhouse. The only issue he had with the conditions was that condition #1 asked for Mill Creek to be removed. He said that could not be done, but there were provisions in the CCRs where they could take any declarant responsibilities or right and remove them from the picture.

## **BOARD QUESTIONS**

Cross asked if Fraser was comfortable with the conditions placed on the applicant in the staff report.

Fraser said yes.

Culpepper asked about condition 2b.

Fraser said that it would be tough to guarantee that dust and erosion would not happen.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

Tim Calaway, represented the Calaway Brothers. He explained the history of the project. He also explained how this application came before the board and why they asked for an amended PUD.

Mower asked why the applicants did not leave the area for the clubhouse as a park and did not give the home owners a choice in whether or not they had a clubhouse.

Calaway said some of the townhouses were small and the people might need a place where they could entertain groups of people who would not be able to fit into their homes.

Culpepper asked how they determined 70% to be the majority.

Fraser said they took the 70% number from the covenants.

Calaway said the original club house approached \$400 a month from each of the homeowners to maintain. What he wanted to do was make 70% of homeowners, which was the affordability factor, to be able to decide how big of a clubhouse they needed or wanted.

Mower said there was no practical way the clubhouse could come to pass.

Calaway said it came down to, in the end, how much was it going to cost the homeowners.

Larsen asked how many lots had been sold so far.

Calaway said he and his brothers own 24 lots, Glacier Bank owns 81 lots, and eight other lots belong to investors and private owners.

Mower asked if the people who bought the original lots expected the original clubhouse.

Calaway said they had done nothing without the private owners' knowledge.

Culpepper said theoretically with both Calaways' and Glacier Bank's ownership they came to the 70% needed to instate the clubhouse.

Calaway said yes, if Glacier Bank wanted to vote it in and he wanted to vote it in, they could.

The board, applicant, and staff discussed exactly what the amended PUD would solve in this situation concerning the clubhouse.

Dennis Beams, Glacier Bank, said this was a housekeeping issue they needed the board's help to clean up. He briefly overviewed their concerns voiced by Calaway as well. He gave a history of what had come to pass so far in their efforts to help the project continue.

Heim asked for clarification on a well which was mentioned by Beams.

Bob Keenan, neighbor on Holt Drive on the south side of the project, concern was a storm water discharge plan. He explained his concern at length and handed out pictures of the way the storm water was handled, standing or eroding in certain areas.

The board, Keenan, applicants and staff discussed at length the issue of storm water discharge on Keenan's property and possible solutions to the problem.

**APPLICANT  
REBUTTAL**

Calaway said they followed the specifications of the engineering plan when they designed the lots. He was willing to work with Keenan to help resolve the issue.

Fraser said the drainage issue was a subdivision issue, not a PUD issue.

The board and staff discussed the verb tenses in the applicant's narrative.

**STAFF  
REBUTTAL**

Grieve explained the process of approval so far on this project, especially concerning storm water runoff. DEQ approved the plans for storm water drain off. If the applicant did not do what they submitted as their storm water drainage plan, it would have been grounds for an injunction. Carver engineering certified the

work on the storm water drainage. He offered options Keenan could pursue to help take care of the drainage problem.

The board, applicants and staff discussed whether the storm water issue fell under PUD jurisdiction or zoning jurisdiction, and the verb tense of the applicant narrative.

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL OF  
MILL CREEK  
AMD PUD  
(FPPUD 09-01)**

Heim made a motion seconded by Larsen to adopt Staff Report FPPUD 09-01 and recommend approval as conditioned to the Board of County Commissioners.

**BOARD  
DISCUSSION**

Heim asked if they could amend the narrative as well as the conditions.

Cross and Fraser discussed if the entire condition #1 could be struck.

**SECONDARY  
MOTION  
(Strike  
condition #1)**

Heim motioned and Larsen seconded to strike condition #1.

**BOARD  
DISCUSSION**

None.

**ROLL CALL  
(Strike  
condition #1)**

On a roll call vote, the motion passed unanimously.

**SECONDARY  
MOTION  
(Amend  
condition #2)**

Culpepper motioned and Hickey-AuClaire seconded to amend condition #2b to read; "Dust shall be controlled to prevent as best as possible its spread to neighboring properties."

**BOARD  
DISCUSSION**

Grieve said this change in wording became zoning. He asked how the planning office would enforce the condition.

Culpepper said he was open to help in phrasing what he wanted to say.

The board and staff discussed how to adequately phrase the condition.

**ROLL CALL**  
*(Amend  
condition #2)*

On a roll call vote, the motion passed unanimously.

**SECONDARY  
MOTION**  
*(Strike narrative  
page 4, 2<sup>nd</sup>  
paragraph, 4<sup>th</sup>  
sentence)*

Cross motioned and Hickey-AuClaire seconded to strike; ~~“It will be approximately 5000 square feet and will contain the manager’s office, game area, fitness equipment, meeting rooms, kitchen, showers, and change area for the pool and hot tub”~~

**ROLL CALL**  
*(Strike narrative  
page 4, 2<sup>nd</sup>  
paragraph, 4<sup>th</sup>  
sentence)*

On a roll call vote, the motion passed unanimously.

**SECONDARY  
MOTION**  
*(Amend narrative  
page 4, 2<sup>nd</sup>  
paragraph, 4<sup>th</sup>  
sentence)*

Culpepper motioned and Toavs seconded to amend language on page 4 of applicant’s narrative to read; “The size and amenities which will be constructed will be decided when at least 70% of the lots are ~~developed~~ sold to individual owners and the owners agree to levy or assessment for lease and maintenance of the clubhouse.”

**ROLL CALL**  
*(Amend narrative  
page 4, 2<sup>nd</sup>  
paragraph, 4<sup>th</sup>  
sentence)*

On a roll call vote, the motion passed unanimously.

**SECONDARY  
MOTION**  
*(Amend staff  
report % to 9.78  
acres)*

Larsen motioned and Hickey-AuClaire seconded to amend staff report FPPUD 09-01 to reflect 9.87 acres of open space throughout the project in the report, not give open space as a % of total project.

**BOARD  
DISCUSSION**

Larsen asked if there was a total of the open acreage anywhere.

Grieve said he had added it up in the staff report.

**ROLL CALL**  
*(Amend staff  
report % to 9.78  
acres)*

On a roll call vote, the motion passed unanimously.

**BOARD  
DISCUSSION**

Larsen asked Fraser if the storm water issue could be fixed by berming.

Fraser said regardless of the height of the berm, a storm event could top it. If the berm met all the requirements, then it was adequate.

Cross asked if there was another hearing with the commissioners and if there was, the applicant might be benefited by taking care of the storm water drainage issue.

Calaway said he did talk to Keenan and said he would address the problem.

The board and applicants discussed the storm water drainage again.

**SECONDARY  
MOTION TO**  
*(keep future  
tense in the  
narrative)*

Culpepper motioned and Larsen seconded to keep "will be" throughout the applicant's narrative and keep future tense of narrative.

**ROLL CALL**  
*(keep future  
tense in the  
narrative)*

On a roll call vote, the motion passed unanimously.

**BOARD  
DISCUSSION**

Larsen said there was no one present to oppose the amended PUD concerning the clubhouse. He thought it was a reasonable request.

Cross thought that the issue of adapting the projects which have already been approved would be coming before the board more and more given the economic times.

**SECONDARY  
MOTION TO**  
*(Add condition to*

Larsen motioned and Heim seconded to add condition #7 (#7 since #1 was stricken) that the final plan be amended as recommended by the Planning Board, including amendments to

***applicant  
narrative amend)***

applicant's narrative.

**ROLL CALL  
(Add condition to  
applicant  
narrative amend)**

On a roll call vote, the motion passed unanimously.

**ROLL CALL TO  
APPROVE  
MILLER CREEK  
AMD PUD  
(FPPUD 09-01)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Culpepper hoped that now that the project was moving forward, there would be less neighborhood complaints.

Beams wanted to make a comment stating he appreciated the effort to work together in getting these projects which had been abandoned fixed up and moving forward again. He appreciated the guidance.

**COMMITTEE  
REPORTS**

Cross summarized what each committee was working on and the board discussed the committees and their projects at length.

Larsen joined Committee A and Culpepper switched to Committee B.

**OLD BUSINESS**

Cross explained and gave a brief history of the business before the board in old business to Larsen.

The first part of old business was the consideration of an addition to the Flathead County Planning Board Bylaws regarding adoption of administrative policies.

Cross read the policy for accepting information from outside sources.

**MOTION TO  
ADOPT  
POLICIES TO  
THE BYLAWS  
OF THE  
FLATHEAD  
COUNTY**

Toavs motioned and Culpepper seconded to adopt the following guide to the policies section of the bylaws of the Flathead County Planning Board; *Per 76-1-305(1) M.C.A., the Board may adopt policies to guide administration of the affairs of the Board. These policies shall be adopted and/or amended following the amendment process outlined herein. Adoption and amendment of Board administrative policies shall be recorded in a separate*



**PLANNING  
BOARD**

*document and kept on file at the Flathead County Planning and Zoning Office. Administrative policies shall be available during normal business hours for public inspection.*

**ROLL CALL TO  
ADOPT  
POLICIES TO  
THE BYLAWS  
OF THE  
FLATHEAD  
COUNTY  
PLANNING  
BOARD**

On a roll call vote, the motion passed unanimously.

**MOTION TO  
ACCEPT A  
DATA  
ACCEPTANCE  
POLICY TO THE  
BYLAWS**

Toavs motioned and Hickey-AuClaire seconded to accept a data acceptance policy to the Flathead County Plannning Board's bylaws to state;

*When the Flathead County Planning Board is involved with preparing maps and text that may eventually be officially adopted by the County as part of the Flathead County Development Code. They may, from time to time, consider including information that originates from sources other than FCPZ office. The board will only consider information from:*

- A. Governmental agencies that have been established by the United States or the State of Montana.*
- B. Licensed professionals that provide data that is verifiably sourced from established authorities in their field, or independent research that is authenticated by the professional.*
- C. Academic entities that are tied to established and accredited institutions of higher learning or advanced study.*
- D. Interested individuals or groups that can verify that their data originates from one of the above sources.*

*The Flathead County Planning Board will, at its discretion, accept data from private agencies that have used public, reputable sources with verifiable data, to collect the information that the FCPB wishes to use. This data may able used in updating and*

*amending the Flathead County Growth Policy, Goals, Policies and maps, but not for site specific projects.*

*Any items which are added to the Flathead County Development Code must follow the prescribed public process which is applicable to each element of the code. The Planning Board will consider those processes as a minimum threshold in terms of assuring public input.*

**ROLL CALL TO  
ACCEPT A  
DATA  
ACCEPTANCE  
POLICY TO THE  
BYLAWS**

On a roll call vote, the motion passed unanimously.

**NEW BUSINESS**

Harris had been contacted by the commissioners to arrange another discussion session between the commissioners and the planning board.

The board and Harris discussed having an agenda for the meeting, possible topics and possible times for the meeting.

The board also discussed meeting an additional Wednesday to discuss long term planning for the valley and possible times.

Mower said the ultimate prosperity of the valley depended on the way the valley developed. He brought up the fact the Flathead Valley was basically a valley with no industry. The ultimate prosperity of the valley depended on moderate growth. He felt they should have a group of people looking at what ultimately the valley should look like.

The board discussed at length different ways of looking at long term planning and the reasons why it was needed.

The board decided to meet on Wednesday June 24, 2009 @ 6:00 – 9:00 for a workshop.

Harris had emailed the board a copy of the Parks and Recreation Master Plan. They were going through their process to come up with a master plan to have it ultimately become a part of the growth plan. He explained the steps necessary for that to happen. He passed out a copy of the 2010 work plan for the

Planning and Zoning office. He went over the proposed budget for the office as well.

The board and Harris discussed the proposed budget.

Harris said Whitefish was going through their process on lakeshore regulations. He explained what would happen if the courts decided in favor of the county as far as jurisdiction and the steps that would need to be taken.

Toavs asked for clarification on the Somers Neighborhood Plan. He wanted to know who started it, who was initiating it, and who was paying for the mailings.

Harris said it was a new neighborhood plan. A new plan; not a continuation of an older plan, which there were rumors of existence that the planning office had not seen or could find. The same group which had been involved the last few neighborhood plan processes asked for the initiation of the Somers Neighborhood Plan. The planning office was not sure there was an appetite for a neighborhood plan in the community or to start the process. So, staff initiated the letter, paid for the mailing, and the return post card with three questions. The questions were, would you support a neighborhood plan process in Somers, would you oppose a neighborhood plan process in Somers, or would you like to learn more about the process and what a neighborhood plan was.

Cross asked what the boundary was that the office sent the cards.

Harris explained how staff decided to set the boundary for the mailing. He said the office was up to a 33 – 34% response to the mailing which was exceptional for a mailer. Of that percentage, about 70% favored moving forward, about 24% didn't know enough about a neighborhood plan to know whether they wanted to move forward and about 6% did not want a neighborhood plan.

Culpepper wanted to know why the office sent out mailings if there was not a clear majority of the neighborhood who came forward to want the plan.

Harris said it was one of the office's functions to assist with neighborhood plans. The first step before the department

decided whether or not they wanted to use a lot of county resources was to determine if there was support for the plan.

Toavs said at the last commissioner's meeting, the questions were asked, who was paying for mailings, and who initiated neighborhood plans. The commissioners all assured them and said at that meeting the county was to pay for no mailings, and that the neighborhood plans were citizen initiated.

Harris said it was community initiated.

Toavs asked if the commissioners knew the county had sent out the mailings.

Harris said absolutely.

Larsen asked how many citizens initiated the plan.

Harris said they had a core group of about 60 to 70 people.

Larsen said they used to have a core group, but how many people actually started this thing.

Harris thought, of the people who still lived here, they were all still in the group.

Larsen didn't understand. When he was part of the board that wrote the growth policy, what they wanted was a group of neighbors to come up with a boundary for the plan. What they were trying to stop were three people taking over 50 square miles.

Harris said they were following the growth policy.

Larsen did not think so. He did not think Harris followed the goal at all. The goal said there was a clear majority of neighbors who want a neighborhood plan in a certain property could start the process. He did not see where that had been done at all.

Harris said that was exactly what the office was trying to ascertain, whether...

Larsen did not know that that was what they were doing at all. He did not think what the office did was ever talked about when they did the growth policy.

Harris said they were actually following the steps of the growth policy.

Larsen said he was following the steps but had not gotten past the clear majority of the neighborhood part and was drawing the boundary. He did not get that.

Culpepper was very concerned about the process. He read an article from the West Shore News about a Somers plan being already drafted. He said that was not what the growth policy said.

Culpepper, Larsen, Toavs and Harris discussed at length the process for neighborhood plans, whether or not the county initiated the Somers Neighborhood Plan process, if the office was out of line with the mailing of the mailers, and if the office planned to reignite other neighborhood plans which were dead. Some colorful adjectives were used by some members to express their frustration at the situation.

Cross said when they met with the commissioners and Mower read chapter 10, he believed, from the growth policy, Mower said it was a really good plan, but the conception part was where it was weak. It was not really clear exactly how the process for the plan started. That was the concern raised to the commissioners. The question of where the genesis was supposed to come from and where was the aid supposed to come from was raised. He felt people had come back from that meeting with different interpretations of the directions they received. He felt this came up again and again and it was something that needed to be resolved so every time a neighborhood plan came up, the planning office was not put in the line of fire. He thought the process could be clearer.

Larsen said it was not the planning office's place to initiate anything and it was not keeping with the goal of the growth policy. He wondered why the office didn't update the policy because it was so darn old anyway.

Cross said this issue would not be resolved tonight, but he did think that it did need to be worked on to get resolved. These issues needed to be gone over with the commissioners again because the last time, they came away with marching orders which people were interpreting differently. He did not think that was a very healthy situation.

Larsen expressed his frustration at owning property in Somers and not receiving one mailing out of the 462 sent. Now this little group was drawing a boundary around his property. If Ardis, his wife, was not up on the news asking Harris for what the notice was, they would not have gotten one and they own property there. He thought it was a terrible process.

Culpepper asked if a Somers Neighborhood Plan was already written.

Harris said no.

Culpepper read the minutes from the Lakeside Community Council which stated there was a drafted neighborhood plan that was not releasable yet. That told him that the neighborhood plan was already written.

Harris said this was important because the office was getting criticism from that part of the minutes which was from the Lakeside Planning Group minutes. Somers had hired a consultant, Lisa Horowitz, to begin writing the plan. They wrote the introduction, a large section on the demographics at the time, and started to work on the downtown section. Then Horowitz left the state and everything started to deteriorate. Now they have about 30% of a plan with outdated data of a draft. It was not even a plan.

Larsen asked why Barb Miller was writing that kind of an email, he wondered if she was telling the truth.

Harris said Larsen would have to ask Miller.

Larsen, Toavs, and Culpepper asked Harris who was responsible for the initiation of the Somers Plan again, why was taxpayers' money being spent on mailings and the education on neighborhood planning at length.

Hickey-AuClaire read from the growth policy that the boundaries should be set through community involvement with initial organizational meetings. She asked if that had been done yet.

Harris said no. What happened was that they held an organizational meeting because the letter was a notification that they were holding an organizational meeting. They tried to get some information...

Toavs asked who asked for the meeting.

Larsen asked who the people who came to Harris were, did they write a letter, and how did they contacted the office.

Toavs asked if they had a letter, something that said who initiated this other than Harris.

Grieve said members of the board were asking questions and not waiting for answers. He said every time Harris started to answer a question, someone else interrupted with another question. He asked for the courtesy to be extended to Harris to have time to answer the individual questions when they were asked.

Larsen said they were just frustrated. They worked so darn hard on the neighborhood plan section. He read from the growth policy a section which he felt supported his opinion the policy was not being followed.

Mower said what that section did not tell anyone was how did that majority come about. That was his problem with that whole section from the beginning. It had a great plan once it was decided there was a majority. There was no clear way to get a majority. What they had was a situation where if they read it literally, there would never be a neighborhood plan. Where would the people get the mailings was one of his questions. There was no way to initiate it.

Larsen said it started with the neighbors, doing it together and the plan being a neighborhood plan not a planning office's plan.

Harris said it would not be the planning office's plan. The whole process was geared so the community could write the plan, and the office would assist. That was the bottom line.

Larsen thought it was ridiculous the way it had been done.

Harris asked for a second to explain where things were at in the process. The office still received responses from the mailer. They held an organizational meeting and then they held a meeting where 40 to 50 people broke into small groups to draw what they thought might be a good neighborhood boundary. Staff brought back from that meeting four or five maps and put them on the website, not as proposed boundaries, but as a

representation of what the community was thinking. At that meeting it became clear there were a lot of people who were unfamiliar with what was involved with a neighborhood plan. They asked staff to come back and explain more about what was involved. They were going to go back on 6/15/09 and explain what a neighborhood plan was and what it did. The whole time staff would be providing information to the community so they could decide whether or not they wanted to continue with a neighborhood plan.

Culpepper asked if the county paid for every single mailing for every single neighborhood plan up to date.

Harris said he could not know that.

Culpepper asked if it was done for Riverdale, or was it done for Bigfork.

Harris said they did notice every single individual in the Whitefish Donut Area which came to around 2,400 mailings. He thought it was appropriate to communicate with the citizens.

Culpepper asked if from this point forward would the Flathead County Planning Office pay for the type of mailing which was sent to the Somers area to every single neighborhood who wanted to have a neighborhood plan or were the neighbors going to be expected to pay for the mailings themselves.

Harris said he could not answer that either. What he could say was given resource allocations, and if staff felt there was community interest, then the office would assist.

Culpepper, Larsen, and Harris again discussed how many people came forward to initiate the Somers plan and what number constituted a clear majority and warranted the spending of county money.

Cross said they were being contentious and not getting anywhere in their discussion.

Culpepper said he would get somewhere then.

## **MOTION**

Culpepper motioned and Larsen seconded to suspend all planning department activity regarding the Somers Neighborhood Plan until a clear majority of residents supported by Somers



**BOARD  
DISCUSSION**

residents is brought forward at which time all county tax dollars used on the Somers Neighborhood Plan will be reimbursed by the neighborhood.

Culpepper thought they were going down the wrong path and this type of process would get them in deep trouble. He did not want the county to get sued for anything. He reiterated his feelings on a majority of neighbors coming forward for the plan and the use of county money for mailings such as the ones sent to the Somers area.

Mower said he did not support the motion. If Culpepper's line of thinking prevailed, then the whole idea of neighborhood plans would go away. If that was what Culpepper wanted then that was what would happen.

Larsen asked why it would go away.

Mower said because there was no practical way to get a majority of 300 - 400 people organized so they could do that.

Hickey-AuClaire said that there needed to be a step to say here was the process, the people needed to go down to the department to get the list of people in the area, and how much it would cost to do the mailing. She gave her personal example of being involved the Riverdale Neighborhood Plan. She said there were only a few neighbors involved from the beginning. Several of the landowners were not involved until the end. She felt things need to be updated on the growth policy. She felt that was a place the board could spend time improving. She did appreciate the outside guidance provided by the planning office during the Riverdale Neighborhood Plan process. She felt she could not support Culpepper's motion.

Mower said on a mailing, if there was 25% return you were lucky. There was no practical way to start the process. Something had to change or nothing would happen.

Larsen could not see why the process could not be started.

The board and staff discussed at length how to define a clear majority to initiate the process.

Toavs asked if a steering committee had been established.

Harris said no, they were still in the organizational stage. The next meeting was nothing more than a 101 education on what was a neighborhood plan.

**ROLL CALL**

The motion failed 4-3 with Hickey-AuClaire, Mower, Heim and Cross dissenting.

**ADJOURNMENT**

The meeting was adjourned at approximately 9:10 pm. on a motion by Hickey-AuClaire. The next meeting will be held at 6:00 p.m. on July 8, 2009.

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Gordon Cross, President

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Donna Valade, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: 7/8/09*